

UNITED STATES DISTRICT COURT
IN THE SOUTHERN DISTRICT OF FLORIDA FORT LAUDERDALE DIVISION

BLAISE PICCHI
BLAISE PICCHI PA
Individually and on behalf others similarly situated
Plaintiffs,

vs

Case No. 11 CV 61797
Hon. Cecilia M. Altonaga.
CLASS ACTION COMPLAINT

WORLD FINANCIAL NETWORK BANK
et al.
Defendants.

AMENDED STIPULATION AND AGREEMENT OF CLASS SETTLEMENT

Plaintiffs Blaise Picchi and Blaise Picchi, P.A. ("Plaintiffs"), and Defendants World Financial Network National Bank, succeeded by conversion by World Financial Network Bank on August 1, 2011, and n/k/a Comenity Bank ("Comenity") and ADS Alliance Data Systems, Inc., enter into the following Amended Stipulation and Agreement of Class Settlement (the "Settlement Agreement") through counsel of record and subject to the approval of the Court in this case pending before the United States District Court for the Southern District of Florida, Case No. 11 CV61797 (the "Case" or the "Action").

1. RECITALS.

- a. Plaintiffs have alleged that Defendants violated the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. 227, et seq.
- b. Defendants deny the allegations in the Complaint and any wrongdoing. Defendants have also raised a number of affirmative defenses to the claims and causes of action at issue which they believe would defeat the claims and causes of action in this lawsuit.
- c. Plaintiffs and Defendants have agreed to settle this case and the claims presented in it.
- d. This Settlement Agreement, including exhibits, contains all of the terms and conditions of the settlement between Plaintiffs and Defendants, both individually and on behalf of the Settlement Class to be formed (the "Class"), subject to final approval of the Court.
- e. The parties have not exchanged any consideration, undertakings, or promises other than those in this Settlement Agreement.
- f. Plaintiffs' counsel has conducted an investigation of the relevant circumstances surrounding this case, the conduct of these Defendants, other settlements involving similar conduct, and the law. In light of that investigation, Plaintiffs'

counsel has concluded that this Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Class. Plaintiffs enter into this Settlement Agreement in order to avoid the uncertainties of litigation, and to assure delivery of the benefits provided below to the Class Members (defined below).

- g. Defendants have concluded, despite their belief that they are not liable to Plaintiffs or the Class for the claims and causes of action in the Action and that they have raised bona fide defenses to these claims, that they will enter into this Settlement Agreement to avoid the uncertainties of litigation, additional expense, inconvenience, and burden of this protracted and complex class litigation; put to rest this controversy; avoid the risks inherent in uncertain complex litigation; avoid potential harm to shareholders; and avoid possible harm to customer relations.
- h. The parties have engaged in arm's length settlement negotiations before Retired Judge William J. Cahill of JAMS, San Francisco. Judge Cahill has previously served as a mediator in dozens of class actions involving consumer protection claims, and a number of class actions involving alleged violations of the TCPA. Judge Cahill is qualified to resolve class cases of this type and has provided his declaration supporting this settlement as fair and adequate in light of his experience in similar matters. The parties have also engaged in three prior mediation sessions before Charles Tetunic, of Mediation, Inc. The parties engaged in these mediation sessions without any prearranged agreements or compensation to either party beyond that disclosed in this agreement.
- i. Defendants have agreed to pay sums to the Class Members from a common fund (the "Settlement Fund") which the parties believe to be fair and adequate to compensate the class members.
- j. The parties file this amended Settlement Agreement following investigation by the parties into the ability to generate a list of the class set forth in the prior agreement. For this reason, the parties amend the settlement agreement as follows.

For these reasons, and subject to the approval of the Court, the parties agree to settle this Action as set forth below.

2. SETTLEMENT PURPOSES ONLY.

- a. The parties agree to the form of the Class in this agreement for settlement purposes only. The parties agree that they will not offer this agreement or any action taken under it as evidence in this or any other case. Each of the parties accepts and assumes the risks of the facts proving to be different. Each of the parties agrees that the terms of this Settlement Agreement will remain in effect except as otherwise provided by this Agreement.
- b. The parties agree that no court should view or treat any portion of this agreement as an admission on the part of Defendants or that any court should certify a class in this or any other action. In the event that the Court fails to finally approve this Settlement Agreement, Defendants may freely: (1) oppose any requests for class

- certification in the Action; or (2) oppose any requests for class certification, or certification in any other proposed or certified class action.
- c. If the Court refuses to grant final approval to this Settlement Agreement or if the Court fails to implement the Class for any reason, the parties agree that this Settlement Agreement will be deemed null and void ab initio as between them.

3. **CLASS FORMATION, CLASS COUNSEL, SETTLEMENT FUND, NOTICES, AND ADMINISTRATION.**

- a. After providing notice to the Class, the parties need not provide any further notice to the individual Class Members except that, Class Counsel shall provide notice of any changes to the Settlement Agreement or timing of any events necessary to implement the settlement on a web site dedicated for the purpose of informing class members of their rights under this settlement agreement.
- b. Plaintiffs and Defendants agree to the formation of a single class for the sole purpose of implementing the Settlement.
- c. Class Definition The class (the "Class") will include:
- i. Where those calls occurred after March 1, 2010 and up through July 30, 2014, as reflected in Defendants' records of call activity;
 - ii. All persons to whom Defendants placed phone calls through an automatic telephone dialing system equipment; and
 - iii. Whose phone number was associated with a cellular phone at the time of the call; and
 - iv. Whose phone number appears in the records of Defendants in association with an account issued through Defendants and serviced by ADS Alliance Data Systems, Inc. ("ADSI") or another Released Party; and
 - v. Whose phone number appears in the records of Defendants in association with a "wrong number" code; and
 - vi. Who is not the named account holder whose address as established by reverse phone lookup was a person ADSI or another Released Party was attempting to communicate with.
- d. The Court will appoint Blaise Picchi and Blaise Picchi, P.A., as class representatives ("Class Representatives").
- e. Within 30 days after the Court's issuance of an order granting preliminary approval of the class settlement, Defendants will have available for deposit \$5,000,000. "The Maximum Fund", to establish the Settlement Fund with a neutral third party Class Administrator ("Class Administrator") selected by the Parties and approved by the Court to administer these funds, wherein the administrator will be authorized to provide notice to the class as described below, and distribute the settlement. In turn, the Class Administrator will deposit funds as requested, into an insured investment or bank account, held in trust for the benefit of the Class and opened for the administration of this case by the Class Administrator. The Class Administrator will advise Defendants of the name of the bank and the account number within 24 hours after commencement of the account. All interest accruing on that account shall accrue for the benefit of the class while this settlement agreement remains in effect. The Class Administrator

will pay out all interest accrued to the class members. In the event that the Court fails to grant final approval for any reason, the interest accrued on the settlement will be returned to the Defendants. The Class Administrator shall report the balance of the funds on deposit to the Parties every three months while this matter remains pending.

- f. Plaintiffs and Defendants agree that the Court will appoint Plaintiffs' Counsel ("Class Counsel") as counsel to represent the class:

Class Counsel

Robert W. Murphy, Esq.
Law Office of Robert W. Murphy
1212 SE 2nd Ave.
Ft. Lauderdale, Florida 33316
(954) 763-8660

Ian B. Lyngklip
Lyngklip & Associates Consumer Law Center, P.L.C.
24500 Northwestern Highway, # 206
Southfield, Michigan 48075
(248) 208-8864

Defense Counsel

Dale T. Golden, Esquire
Golden Scaz Gagain, PLLC
201 North Armenia Avenue
Tampa, Florida 33609
(813) 251-3632

- g. The parties agree to the entry of an injunction against any parallel litigation pending in any other jurisdiction in any Federal Court in the United States in order to implement and administer this settlement.
- h. Within 14 days of executing this Settlement Agreement, Plaintiffs and Defendants will file a joint motion for entry of an order of preliminary approval in the form or substantially similar form as Exhibit "A" attached hereto ("Preliminary Approval Order") under Fed. R. Civ. P. 23 to:
- i. Define "Class" for Settlement Purposes;
 - ii. Appoint Class Counsel;
 - iii. Preliminarily Approve this Settlement Agreement;
 - iv. Schedule Dates for a Hearing to Determine the Fairness of the Settlement ("Final Approval Hearing").
 - v. Direct that a plan for notification to the Class Members ("Class Notice Program") shall be followed as more particularly described below, including the sending of written notice to Class Members in the form or substantially similar form as Exhibit "B" hereto ("Notice of Class Action");
- i. The Notice of Class Action shall contain the information required by Fed. R. Civ. P. 23 and the Court and shall disclose, at a minimum, the following:

- i. The manner in which members of the Class may exclude themselves, or (opt out) from, or participate, in the Class Settlement by providing a claim form to the Class Administrator;
- ii. The manner in which members of the Class may object to the class settlement;
- iii. The rights of Class Members and benefits of participating in the Class, including the compensation to Class Counsel and the Class Representatives as detailed below;
- iv. That Class Counsel will identify, with agreement from counsel for Defendants, the proposed recipient of cy pres at the time of the preliminary approval hearing, and that the proposed recipient will be identified on the web site.
- v. The address of a web site where class members can obtain information about the settlement, answers to frequently asked questions, any changes to the schedule, and find dates of any continued proceedings before the court.
- j. Upon submission of the Motion for Preliminary Approval, the Court may set a hearing to determine whether the Court should preliminarily approve the Settlement Agreement and enter the Preliminary Approval Order.
- k. Upon preliminary approval and entry of the Preliminary Approval Order, the Court will schedule dates for the implementation of the Settlement Agreement and set a hearing ("Final Approval Hearing") to determine the fairness and adequacy of the Settlement Agreement under the standards set forth in Rule 23 and any other applicable law. At the Final Approval Hearing, the Court will provide the Class Members with an opportunity to be heard concerning the proposed settlement and may consider any objections to the Settlement Agreement.
- l. The Defendants shall be responsible, through assistance from the class administrator, for preparing and delivering any notifications ("CAFA Notices") required by the Class Action Fairness Act, 28 U.S.C. 1332(d), 1453, and 1711 through 1715 and shall file a copy of the CAFA Notices with the Court together with proof of service of same.
- m. Upon completion of the Class List as set forth in Section 4 below, the parties shall file a joint motion for approval of class notice, which shall inform the Court that the Class List has been completed and which shall request that the Notice of Class Action be sent to the Class Members. The Class Administrator will send the Notice of Class Action to the Class Members within thirty (30) days from entry of an order approving the joint notice for approval of class notice ("Class Notice Order"). The cost of designing and delivering class notice will be paid from the Settlement Fund except as set forth below.
- n. The Class Administrator shall establish a web site providing the information required by this Settlement Agreement. The cost of designing and deploying that website will be paid from the Settlement Fund.
- o. The Class Administrator will design a banner advertising campaign, reasonably calculated to provide notice of the settlement to Class Members who have not

been contacted by mail. The cost of this campaign will be paid from the Settlement Fund;

- p. After approval, the Class Administrator will pay all costs of postage, printing, and administration of the Class from the Settlement Fund. In the event that the Settlement fails for any reason to be approved, Defendants shall bear the cost of notice and administration and will pay those costs to the Class Administrator. Defendants shall pay any costs associated with any re-notice of the class members or decertification of the class.
- q. The Class Administrator will receive claims ("Claims") and notices of exclusions ("Exclusions") and administer the distribution of the Settlement Fund to the Class.
- r. Objections to the proposed Settlement by Class Members shall be filed no later than forty-five (45) days prior to the date of the Final Approval Hearing with service on all parties of record.
- s. At the conclusion of the period allowed for claims, the Class Administrator will compile a report for the Notice Program, including relevant information concerning the number of Claims and Exclusions, as well as the estimated amount due to the Class Members based upon the Claims received within 30 days of the date on which class opt-outs and objections are due.
- t. Class Counsel will answer any inquiries concerning the matters contained in this Settlement Agreement from the Class Members of the Class and assist the Class Members in tendering claims and exclusions. Class Counsel may provide answers to frequently asked questions ("FAQs") through an interactive voice response system ("IVR") to be established and maintained by the Class Administrator so long as Class Counsel also provides contact information for direct contact with Class Counsel by phone. The cost for establishing and maintaining the IVR will be paid from the Settlement Fund.
- u. Plaintiff will file a Joint Motion for final approval of this Settlement Agreement which Defendants will not oppose. Class Counsel will file a memorandum in support of that motion. Defendants may at their election file their own memorandum regarding the motion.
- v. The Court will conduct a hearing to determine the fairness of the proposed settlement, to consider any objections by Class Members and to approve the attorneys' fees to be awarded in the Action, along with the appropriateness of the incentive award to the Class Representatives in this matter.
- w. Upon approval of the settlement, and after the period for any appeals thereof has run, Plaintiffs and Defendants will implement the Settlement as set forth below, subject to the approval and other requirements of this Court.

4. **IDENTIFICATION OF THE CLASS MEMBERS.**

- a. Wrong Number Listing Compilation. The parties will identify class members through a reverse phone lookup of cellular phone numbers, using reliable sources provided by the Class Administrator, based upon a list of "wrong number" coded phones supplied by Defendants. Within 45 days of entry of the Preliminary Approval Order, Defendants will provide Class Counsel a listing of the phone

number identified as a "wrong number" as coded as being the recipient of a "wrong number" call ("Wrong Number List"). The Wrong Number List shall be in Excel spreadsheet format or other format and include name, phone number called, and the address of the person to the extent applicable. Defendants represent that the Wrong Number List will include no more than 1,000,000 persons.

- b. Scrubbing of Wrong Number List. Within 30 days of receiving the Wrong Number List, the Class Administrator will "scrub" the Wrong Number List to identify those persons whose phone numbers were associated with a cell phone at the time of the calls, the likely cell phone carriers and the address associated with that cellular phone number ("Scrubbed List").
- c. Compilation of Class List. Within 45 Days of receiving the Scrubbed List from the Class Administrator, Defendants will compile a list of Class Members ("Class List") by cross referencing the listing of the cell phone subscribers against the list of account holders/customers of Defendants ("Customer List"). Those persons whose names and primary address match the name and address associated with the account in the Customer List will be excluded from the Class. All remaining persons will be potential members of the Class and will be included in the Class List, subject to other criteria as set forth in Section 5.
- d. Upon completion of the Class List, the parties shall apply to the Court for entry of the Class Notice Order as set forth in Section 3 (n) supra. Upon entry of the Class Notice Order, the Class Administrator will conduct a New Change of Address ("NCOA") search of all members of the class to update the addresses for the Class List provided by Defendants or provided through reverse lookup. Upon the completion of the NCOA update, the Class Administrator will mail a Notice of Class Action to each Class Member, as directed in the Class Notice Order.
- e. If any Notice of Class Action is returned as undeliverable, the Class Administrator will conduct an additional search through its customary practices for further updated addresses, and send additional notices to any updated addresses identified through this additional search. Once a Notice of Class Action has been re-sent to these updated addresses, no further notice need be sent to the Class Members in order for this Agreement to be effective and binding.

5. CLAIMS, EXCLUSIONS, AND OBJECTIONS.

- a. General. Each Class member who wishes to participate in the Settlement must complete an on-line claim form ("Claim Form") in the form or substantially similar form as or shall notify the Class Administrator that they do not have the ability to submit a Claim Form on-line and request a written Claim Form to be sent by U.S. Mail or other means. Each Settlement Class Member shall be entitled to make only one claim for one call per cellular telephone number, regardless of the number of calls received by each cellular telephone number. The Class Administrator shall provide a Claim Form to each person who notifies the Class Administrator that he/she has no ability to submit an on-line claim form. Each Class Member who provides a Claim Form shall certify their contact information, including their address and an email address, where subsequent

notices may be sent, and provide their consent for such contact. Each individual who submits a Claim Form by other means shall provide an address for future contact and delivery of correspondence. In the event that further notices to the Class are required, the Class Administrator may provide that notice by email if an email address has been provided by the Class Member.

- b. Description of Claim Process.
 - i. In the Claim Form, each Class Member must certify under oath, the following:
 - (1) he/she received a call(s) from the Defendants on their cellular phone and must identify the cell phone number;
 - (2) The date said call was placed; and
 - (3) he/she was not called on an account that the Class Member had with World Financial Network National Bank, World Financial Network Bank n/k/a Comenity Bank or World Financial Capital Bank n/k/a Comenity Capital Bank.
- c. If the claimant's name and/or cellular telephone number matches the Notice Database or Class List generated from Defendants' records, that claim will be approved, subject to the limitation that only one claim will be paid to each Settlement Class Member.
- d. Each Class Member who wishes to be excluded from the Settlement may submit an on-line exclusion, or provide written notice to the Class Administrator as set forth in the class action website.
- e. Each person wishing to object to the Settlement shall serve his/her objections on Class Counsel and Defense Counsel, in writing, at the address provided in this Settlement Agreement, and file that objection with the Court. Any person objecting to the Settlement may appear at the Final Fairness Hearing, either in person, or through counsel with or without having filed written objections. The Court will consider all timely objections received by the date set by the Court. Any person who fails to attend the Final Fairness Hearing waives appeal of any ruling on their objections.

6. SETTLEMENT BENEFITS FOR CLASS MEMBERS AND THE CLASS REPRESENTATIVE

- a. The Class Administrator shall issue only one check per identified Class Member, unless the prior check is canceled or returned.
- b. By the time set by the Court, the Class Administrator will advise Defendants and Class Counsel of the number of claimants to the Settlement Fund and the estimated amount of the disbursements to be made to each Class Member after deduction of the anticipated attorney's fees to Class Counsel and other expenses provided for by the Settlement Fund as set forth in Section 3 of this Agreement.
- c. Each person participating in the Settlement Fund will receive a pro rata share of the Settlement Funds allocated after deduction of the allowed attorneys' fees and costs and the Incentive Award (the "Net Settlement Fund"). The Class Administrator shall calculate the amount due to each class member.

- i. Each person who submits a claim is entitled to a single share of the Net Settlement Fund.
- ii. In no event may any class member receive an amount in excess of Five Hundred Dollars (\$500.00).
- d. The Class Representatives will each receive an incentive award of \$10,000.00, as a Class Representative Award, to be paid from the Settlement Fund.
- e. Within one week of this Court issuing its final order settling the case, Defense Counsel shall permit the Class Administrator to disburse the Settlement Funds as provided for below.
- f. Within three weeks of receiving permission to disburse from the Settlement Funds, the Class Administrator shall issue checks to the Class Members, the Class Representatives, and Class Counsel. Each individual Check shall contain a statement confirming that it will only be valid for a period of 90 days from its date of issuance (the "Payment Period"), which shall be within one calendar week of the date that such Check is mailed by the Class Administrator.

7. **ATTORNEYS' FEES, CY PRES, AND CLASS MEMBERS' OBLIGATIONS.**

- a. No attorney's fees, litigation expense, including travel expense, mediation fees and costs ("Attorney Fees and Costs") may be paid out of the Settlement Fund or by Class Counsel in relation to this case unless the Court approves such payment. Any party seeking payment of Attorney's Fees and Costs shall file a motion and memoranda supporting that request, and that party must appear at the Final Fairness Hearing. Any party who fails to file such a request, and fails to appear, waives the right to seek recovery of costs and fees and any appeal of the issue.
- b. Defendants agree that they will not object to, or in any way oppose payment to Class Counsel for attorneys' fees in the amount of no more than 27.5% of the total value of the Settlement Fund, in addition to litigation expense, including travel expenses, mediation fees and costs.
- c. Following preliminary approval of this Settlement, no party may engage in any further confidential negotiation relating to the Class, this Settlement Agreement, incentive awards, the Settlement Fund, attorneys' fees, or objections. Such communications are enjoined.
- d. Following preliminary approval of this settlement, no party or their counsel, may directly or indirectly pay any fee or incentive award to any objector or intervener or their attorney in exchange for withdrawing bona fide objections to the Settlement Agreement. Similarly, no party or their counsel may directly or indirectly pay any fee or incentive award to any objector or intervener or their attorney without approval of the court. Any objector or intervener seeking payment for their services must file a motion seeking that payment along with their objections. Any person seeking such payment shall appear at the Final Fairness Hearing. Any intervener or objector who fails to file such a motion, and appear, waives payment and appeal of any ruling concerning that payment.
- e. Any approved Attorney Fees and Costs, or Class Representative Award, will be paid to Class Counsel within twenty one days after this Settlement is finally approved, and all appeals, if any, are resolved.

- f. Defendants agree that it will not oppose, or seek the reduction of any Class Representative Award, or cy pres award, to the extent any such payment is required.
- g. To the extent that any funds are not distributed or negotiated within 180 days of issuance of the settlement checks, Class Counsel shall move to distribute those funds to cy pres recipients to be mutually agreed to by the parties. The Court may determine whether it agrees with the proposed cy pres recipients without further argument or hearing. The Class Administrator shall issue its final check to the cy pres recipient, 21 days after the Court issues its order confirming the recipients.
- h. The Plaintiffs and Class Counsel, Defendants, and Defense Counsel endorse this Settlement Agreement as a fair, adequate, and reasonable settlement of disputed claims, and affirm that the Settlement Agreement brings about complete closure, and an end to this litigation. After final approval of this Settlement Agreement by the court, the entire action shall be dismissed with prejudice.

8. **RELEASE OF ALL CLAIMS AND WAIVER AND RELEASE/COVENANT NOT TO SUE.**

- a. Except as provided above, the named Plaintiffs and each Class Member who submits a claim as a member of either class, releases his or her claims against Defendants and "Released Parties", which include, but are not limited to, Comenity Bank, ADS Alliance Data Systems, Inc., Alliance Data Systems Corporation, Comenity Servicing, LLC, Comenity Capital Bank, Comenity, LLC, and each of their respective past, present, and future parents, subsidiaries, holding companies, affiliated companies and corporations, and each of their respective past, present, and future directors, officers, managers, employees, general partners, limited partners, principals, agents, insurers, reinsurers, shareholders, attorneys, advisors, representatives, predecessors, successors, divisions, joint ventures, assigns, or related entities, and each of their respective executors, successors, assigns, and legal representatives (hereinafter, "Released Parties") for any claims arising out of or related to Defendants' alleged failure to comply with the provisions of 47 U.S.C. § 227 et. seq. Class members only release claims which have arisen as of the date of the Settlement and do not release any future claims.
- b. The Named plaintiffs and each member of the Class agree not to start, continue, intervene in, participate in, or receive any benefits from, any lawsuit, arbitration, or administrative, regulatory, or other proceeding against Defendants or "Released Parties" and each of their respective past, present, and future parents, subsidiaries, holding companies, affiliated companies and corporations, and each of their respective past, present, and future directors, officers, managers, employees, general partners, limited partners, principals, agents, insurers, reinsurers, shareholders, attorneys, advisors, representatives, predecessors, successors, divisions, joint venture(s), assigns, or related entities, and each of their respective executors, successors, assigns, and legal representatives in any jurisdiction based upon, or relating to, any claims, facts, or circumstances which are covered by the Action, or by this Settlement Agreement except as provided herein.

- c. Nothing in this Agreement prevents members of the Class or Defendants from enforcing the provisions of this Settlement Agreement.
- d. Plaintiffs shall dismiss with prejudice, and release and discharge their claims against Defendants and the Released Parties relating to or arising out of the matters alleged in the Complaint including any claims arising out of or relating to any calls made by Defendants or Released Parties to the Named Plaintiffs' cellular telephones.
- e. The Parties acknowledge that they may hereafter discover facts different from, or in addition to, those which they now claim or believe to be true with respect to the claims released herein, and agree that this Settlement Agreement shall remain effective in all respects notwithstanding the discovery of such different, additional, or unknown facts.
- f. In entering into this Settlement Agreement, each party assumes the risk of any negligent misrepresentation, or mistake. If any party should discover, subsequent to Final Judgment, that any fact relied upon by it/him/her in entering into this Settlement Agreement was untrue, or that any fact was concealed from it/him/her, or that its/his/her understanding of the facts or of the law was incorrect, such party shall not be entitled to any relief in connection therewith, including without limitation, any alleged right or claim to set aside or rescind this Settlement Agreement. This Settlement Agreement is intended to be, and is final and binding between the Parties hereto, regardless of any claims or misrepresentation, promise made without the intention to perform, concealment of fact, mistake of fact or law, or any other circumstance whatsoever.
- g. To the extent Congress, the FCC or any other relevant regulatory authority promulgates different rules, orders, or requirements under the TCPA, or any other law or regulation that would govern any conduct affected by this Settlement, those laws and regulatory provisions shall control this Settlement and the conduct of the Parties. In the event the law under the TCPA, or the interpretation thereof by the FCC changes or any new rule is enacted by Congress or new regulation or declaratory ruling or new rule making is issued or ordered by the FCC such that it would have materially affected whether the Defendants would have entered into the subject Settlement herein up until the FINAL approval of this proposed class action Settlement by the Court, the entire Settlement herein shall be deemed null and void at the discretion of Defendants.
- h. All class members who do not elect to exclude themselves from this settlement will be bound by its terms, irrespective of whether they submit a claim.

9. **TERMINATION OF AGREEMENT AND RIGHT OF REIMBURSEMENT OF ADMINISTRATION COSTS.**

- a. In the event that more than 2,000 of the individuals to whom class notice is sent elect to exclude themselves from the Settlement Agreement, the Defendants may elect to terminate this Settlement Agreement and proceed to litigate the case on the merits without any adverse inference as set forth above.
- b. Defendants agree to pay any costs of notice and administration that is in excess of \$500,000. To the extent that any surplus in the Settlement Fund remains after all

class claims have been paid, and before any amounts are to be distributed to any cy pres recipient, such surplus shall be used to reimburse Defendants for any amounts paid by Defendants for notice and administration costs.

- c. In the event that the Wrong Number List exceeds 1,000,000 people, Plaintiffs may elect to terminate this Settlement Agreement and proceed to litigate the case on the merits without any adverse inferences as set forth above. Plaintiffs may also terminate this Agreement in the event that any formal objection to the settlement is determined to be meritorious.

10. ADDITIONAL TERMS

- a. Entire Agreement. This Settlement Agreement, together with its Exhibits and attachments constitutes the entire agreement of the Parties. This Settlement Agreement supersedes any prior agreement or understanding between the Parties with respect to the subject matter of this Settlement Agreement. Parties may not change, modify, or amend this Settlement Agreement except in writing signed by the parties, subject to the approval of the Court.
- b. Governing Law. Federal law governs this Settlement Agreement and all questions concerning its performance or interpretation.
- c. Counterparts. This Settlement Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
- d. Binding Effect. This Settlement Agreement binds and inures to the benefit of the Parties, the Class, and their representatives, heirs, successors, assigns and Released Parties (Par. 8a). The parties represent to each other that they have not assigned, or in any other way conveyed, any interests that they had, have, or may have with respect to the Action. The parties agree that the releases, dismissals, and mutual covenants and representations provided in this Settlement Agreement constitute lawful and adequate consideration for one another.
- e. Headings. The headings of this Settlement Agreement are included for convenience only, and will not be deemed to constitute part of this Settlement Agreement, or to affect its construction or interpretation. The numbering of provisions herein is intended to designate subsections where applicable.
- f. Construction. No party to this Settlement Agreement will be considered to be the drafter of this Settlement Agreement, or any of its provisions, for the purpose of any statute, case law, canon, or rule of interpretation or construction that would, or might, cause any provision herein to be construed against the drafter of this Settlement Agreement. Each party has cooperated in the negotiation, drafting, and preparation of this Settlement Agreement, and has relied upon the advice of counsel of their choice, and such other persons as they may have deemed appropriate. Each party states that the terms of this Settlement Agreement are fully understood and voluntarily accepted.
- g. Representation by Counsel. The Parties affirm and represent that they have received copies of this Settlement Agreement, carefully read and reviewed its provisions with their counsel, or such other persons as referenced above,

understand its contents, and executed this Settlement Agreement voluntarily, without duress, and with the advice of such counsel or other persons.

- h. Waiver. The waiver by one party of any breach of this Settlement Agreement by any other party will not be deemed a waiver of any prior or subsequent breach of this Settlement Agreement.
- i. Full Authority. All counsel, and all other persons or entities executing this Settlement Agreement, or any related settlement documents, warrant and represent that they have the full authority to do so, and that they have the authority to take the appropriate action required, or permitted to be taken, under this Settlement Agreement in order to effectuate its terms.
- j. No Beneficiaries. No portion of this Settlement Agreement is intended to, or will, with respect to this Action, and the subject matter hereof, provide any rights to, or to be enforceable by, any person or entity that is not a Class Member, Defendants, or a party specifically released under this Settlement Agreement, except as is specifically provided in this Settlement Agreement.
- k. Inadmissibility. The settlement negotiations resulting in this Settlement Agreement have been undertaken by Plaintiffs and Defendants and their respective counsel, in good faith, and for settlement purposes pursuant to Fed. R. Evid. 408, and no evidence of any negotiations or discussions underlying this Settlement Agreement will be offered or received in evidence in any action or proceeding for any purpose, nor will the Settlement Agreement be offered or received in evidence in any action or proceeding for any purpose, except for the sole purpose of enforcing the terms and conditions of this Settlement Agreement.

11. RETURN OF CONFIDENTIAL DOCUMENTS.

Within 30 days of Final Judgment, the original, and all copies of all confidential or highly confidential documents, and/or information subject to the Protective Order entered in this Action, shall be returned to the designating party with a certification that no copies have been retained by the receiving party.

12. CONDITIONS PRECEDENT TO FINAL SETTLEMENT.

- a. This Settlement Agreement will bind the Parties and the Class Members when all of the following have occurred:
- b. This Court has issued its Order for final approval of this Settlement Agreement, including an award of attorneys' fees and costs, following notice to members of the Class, and an opportunity for them to be heard;
- c. The appeals period following final approval of this Settlement Agreement has expired, and any and all appeals are resolved; and
- d. The parties have not exercised any rights they may have to void the settlement.
- e. No Court having jurisdiction over this case has made material modification to the Settlement Agreement.

13. FINAL SETTLEMENT ORDER/FINAL SETTLEMENT ACTIONS.

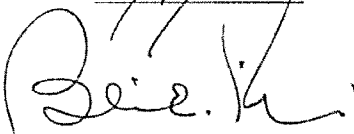
- a. Upon completion of all of the foregoing conditions precedent to final settlement, the following actions will occur:
- i. This Court will issue a Final Settlement Order dismissing the Action against Defendants with prejudice, and without costs (except as previously provided); and
 - ii. This Court will retain jurisdiction to enforce the terms of this Settlement Agreement.

Executed
ON BEHALF OF PLAINTIFFS



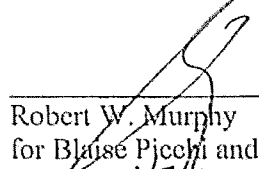
Blaise Picchi

Dated 1/7/2015



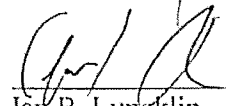
Blaise Picchi PA

By Blaise Picchi



Robert W. Murphy
for Blaise Picchi and Blaise Picchi, PA

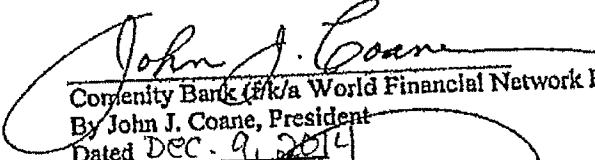
Dated 1/7/15




Ian B. Lyngklip
for Blaise Picchi and Blaise Picchi, PA

Dated 1/7/15


Executed
ON BEHALF OF DEFENDANTS


Comenity Bank (f/k/a World Financial Network Bank)
By John J. Coane, President
Dated Dec. 9, 2014

ADS ALLIANCE DATA SYSTEMS, INC.


By Melisa Miller, Executive Vice President and President Retail Services
Dated Dec. 8, 2014

By Edward Heffernan, President and CEO
Dated _____

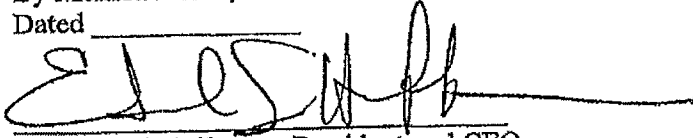

Dale T. Golden for Defendants
Dated 1/12/15

Executed
ON BEHALF OF DEFENDANTS


Comenity Bank (f/k/a World Financial Network Bank)
By John J. Coane, President
Dated _____

ADS ALLIANCE DATA SYSTEMS, INC.

By Melissa Miller, Executive Vice President and President Retail Services
Dated _____



By Edward Heffernan, President and CEO
Dated DEC. 8, 2014



Dale T. Golden for Defendants
Dated 1/12/15